



California League for Environmental Enforcement Now

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California  
Environmental  
Rights Alliance

Californians for  
Alternatives to Toxics

Center for  
Environmental Health

Center on Race,  
Poverty and the  
Environment

Communities for a  
Better Environment

Ecological Rights  
Foundation

Environmental Law  
Foundation

Mateel Environmental  
Justice Foundation

Natural Resources  
Defense Council

Occupational  
Knowledge

Physicians for Social  
Responsibility  
(LA, SF Bay Area)

The Rose Foundation  
for Communities and  
the Environment

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Individuals**

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Dear Carol and Fran:

On behalf of CLEEN, thanks once again for providing such a civilized forum for discussing these issues. We were very impressed by the cooperative tone on March 14, due in large measure to the clarity with which you set the guidelines for the workshop and then explained OEHHA's current thinking on food warnings.

If you create a small Task Force to continue work on this issue (which is a good, practical idea), CLEEN pledges to participate, with me and several other CLEEN members. I assume the Task Force will be relatively balanced in terms of viewpoint, so that the community that supported Prop. 65 and is involved in its enforcement will have roughly as many representatives as the regulated community. I have several suggestions regarding which CLEEN members would be valuable, cooperative participants.

I believe that OEHHA's suggestion of a multi-faceted approach to food warnings received the most support at the workshop, and we support it, as we have in the past. Our understanding of the proposal is that it involves a three part approach:

First is an on-package "warning" which might replace the full "safe harbor" language with an approved symbol or signifier or Glyph that would appear on the product in every instance. We believe this is not only sensible but the only way to meet the mandate of the statute, fulfill its purposes, and meet the standards in *Ingredient Communication Council*.

Second is in-store warning materials, to which the consumer would be directed by the symbol, and perhaps signage. This might take the form of one or more sign(s) or brochure(s) (or both) and perhaps – technology permitting – a full safe harbor warning on the receipt.

Third, all of this might be supplemented with information available on an Internet site OEHHA might create and maintain.

We have several comments regarding this overall approach:

1. As noted, package-specific warnings or symbols is the foundation for any multi-part warning program. While one participant suggested on-package

or on-product labels or warnings were unwanted, that is a minority viewpoint. While it is true that a label or warning is by its nature succinct and without embellishing information, that does not render it unacceptable. Indeed, it was for that very reason we understood you to consider a more multi-faceted approach that would supplement, not replace, a package label.

2. It might make sense to accompany the program with a consumer education campaign, so that Californians would know what the Glyph means and where they could access more information. However, such a program cannot be a generalized "warning campaign" that supplants the other parts.
3. It would be the responsibility of manufacturers, not retailers, to affix symbols to food packaging, but it remains the responsibility of the retailer to protect the consumers they serve to ensure that any required symbols are present on the package.
4. Retailers would be responsible for providing access to Signs, Brochures, and Receipt Warnings.
5. OEHHA is the only trusted source to provide supplemental information on the Internet.
6. Although we like the idea of colored barcodes that could be scanned on site, we are wary of specifying any technology in the regulations that might soon be outdated.

From our point of view, as a result of the March 14 meeting, certain things can be eliminated from further discussion:

1. As you noted, any party who wishes to argue there should be no warnings is not contributing to the work of OEHHA and the Task Force.
2. At the workshop, there seemed to be consensus that any warning scheme reminiscent of 1-800-BALONEY is neither clear nor reasonable, and that the Internet therefore cannot be offered as the only means of education. The fact that almost 30 percent of American households do not have Internet access or computer (with the percentages even higher in communities of color or households with lower income or education) makes clear that warning information cannot be conveyed via computer. However, the Internet is viable as a means to offer supplemental information.
3. With regard to whether a warning must be given prior to sale or prior to exposure, it is possible to make an academic argument, as some did at the workshop, that the warning need only be provided prior to exposure, but not purchase. This is incorrect both legally and practically. At the workshop, Carol noted that it was unreasonable to expect a consumer to have to go back to a store to return an unwanted product; perhaps a clear statement from OEHHA could clarify this.
4. Any effort to dilute the warning should be rejected. Some who oppose the statute and resist the implementation of "clear and reasonable warnings" offer warning programs that move away from a succinct warning in favor of comparative warnings, data or generalized educational materials. There should be no effort to compare the fact of exposure in a product to other risks, cancer risks or products.

5. That there may be many warnings is not a defect of the statute, but a defect of the food supply. No compromise of Prop. 65's clear commands can be made because there will be "too many warnings."
6. We are certain that California can handle this issue without participation by or reliance on the FDA. The FDA's mandate is very different from Prop. 65's. Moreover, Prop. 65 passed overwhelmingly in part because Californians did not trust the FDA to protect them, and the FDA has done little in the past 22 years to gain consumers' confidence.

Finally, we want to emphasize that OEHHA has full discretion concerning the content of any warning page it chooses to post for each chemical. This information should represent the best scientific information available concerning each chemical's threat to public health.

Thank you again for providing the opportunity to comment.

Yours truly,



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